

HOUSE BILL No. 1308

DIGEST OF INTRODUCED BILL

Citations Affected: IC 13-18-10.

Synopsis: Local review of confined feeding operations. Allows the department of environmental management to approve the construction after December 31, 2008, of a confined feeding operation only if the construction has been approved by the local health department and the local zoning authority. Establishes the procedure for local approval, including an appeal to the county executive of an approval or denial. Provides for administrative guidance and rulemaking.

Effective: July 1, 2007.

Cheatham

January 16, 2007, read first time and referred to Committee on Agriculture and Rural Development.

C
o
p
y



First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1308

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 13-18-10-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) **Subject to**
3 **subsection (b)**, a person may not start construction of a confined
4 feeding operation without obtaining the prior approval of the
5 department.

6 **(b) A person may not start construction of a confined feeding**
7 **operation after December 31, 2008, without obtaining the prior**
8 **approval of:**

9 (1) the local health department or health and hospital
10 corporation that has jurisdiction where the operation is to be
11 located;

12 (2) the local zoning authority that has jurisdiction where the
13 operation is to be located, or the county executive if the
14 operation is to be located in a county that does not zone under
15 IC 36-7-4; and

16 (3) the department.

17 ~~(b)~~ (c) Obtaining an NPDES permit for a CAFO meets the



C
o
p
y

requirements of:

- (1) subsection (a);
- (2) **subsection (b)(3)**; and
- (3) 327 IAC 16;

to obtain an approval.

SECTION 2. IC 13-18-10-1.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 1.2. (a) A person that submits applications under section 1(b) of this chapter for approval of the construction after December 31, 2008, of a confined feeding operation to:**

- (1) the local health department or health and hospital corporation that has jurisdiction where the operation is to be located; and
- (2) the local zoning authority that has jurisdiction where the operation is to be located, or the county executive if the operation is to be located in a county that does not zone under IC 36-7-4;

must submit the applications on forms provided by the department.

(b) Subject to section 2(b) of this chapter, an applicant described in subsection (a) must submit to each of the entities referred to in subsection (a)(1) and (a)(2) an identical application form containing all of the information required in an application under section 2(a)(1) through 2(a)(4) of this chapter.

(c) Either or both of the entities referred to in subsection (a)(1) and (a)(2) may suspend the processing of an application if the entity or entities:

- (1) determine not more than thirty (30) days after receipt of the application that the application is deficient; and
- (2) mail to the applicant a notice of deficiency that specifies the parts of the application that:
 - (A) do not contain adequate information for processing of the application; or
 - (B) are not consistent with applicable law.

SECTION 3. IC 13-18-10-1.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 1.3. (a) The entities to which applications are submitted by an applicant under section 1.2 of this chapter:**

- (1) subject to section 1.2(c) of this chapter, shall publish notice under IC 5-3-1 of a joint public hearing on the applications,

C
o
p
y



which must be held not later than forty-five (45) days after the date of the later of the two (2) complete application submissions under section 1.2(a) of this chapter;

(2) shall hold the joint public hearing, taking testimony from the applicant and the public on the applications;

(3) shall conduct any inquiry or investigation, consistent with the entities' duties under this chapter, that the entities consider necessary before making a determination; and

(4) may approve the applications only if the entities determine that the construction and operation of the proposed confined feeding operation are consistent with the public health, safety, and welfare.

(b) After the public hearing and any inquiry or investigation under subsection (a), each of the entities to which applications are submitted by an applicant under section 1.2 of this chapter shall:

(1) make a separate written determination on the application submitted to the entity, either approving or denying the application;

(2) give notice of the determination to:

(A) the applicant; and

(B) the department;

not later than forty-five (45) days after the date of the public hearing, unless the entity and the applicant agree to a longer time; and

(3) if the entity approves the application, publish notice of the approval under IC 5-3-1 not later than thirty (30) days after the date of the entity's determination.

SECTION 4. IC 13-18-10-1.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 1.4. (a)** If an application is denied under section 1.3 of this chapter by an entity other than the county executive, the applicant may appeal the denial by filing an objection petition with the county executive not more than ten (10) days after the date of the notice under section 1.3(b)(2) of this chapter. The objection petition must specifically identify the reasons for the applicant's objections.

(b) Subject to subsection (c), if an applicant files an objection petition with a county executive under subsection (a) the county executive shall do the following:

(1) Publish notice under IC 5-3-1 of a public hearing on the application denial. The public hearing must be held not later than forty-five (45) days after the date of filing of the

C
o
p
y



objection petition under subsection (a).

(2) Hold the public hearing, taking testimony from the applicant and the public on the application denial.

(3) Conduct any inquiry or investigation, consistent with the county executive's duties under this chapter, that the county executive considers necessary before making a determination.

(c) A county executive may overturn the denial of an application under this section only if the county executive determines that the construction and operation of the proposed confined feeding operation are consistent with the public health, safety, and welfare.

(d) After the public hearing and any inquiry or investigation under subsection (b), a county executive with whom an applicant has filed an objection petition under this section shall:

(1) make a written determination on the objection petition; and

(2) give notice of the determination to:

(A) the applicant; and

(B) the department;

not later than thirty (30) days after the date of the public hearing, unless the county executive and the applicant agree to a longer time.

(e) If both of the entities referred to in section 1.2(a)(1) and 1.2(a)(2) of this chapter have denied the applications submitted by an applicant under section 1.2 of this chapter, and if the applicant has appealed the denial of the applications under this section, the county executive may consolidate the public hearings under subsection (b) on the entities' denial of the applications.

SECTION 5. IC 13-18-10-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 1.5. (a)** If one (1) or both of the applications for the construction after December 31, 2008, of a confined feeding operation are approved under section 1.3 of this chapter, ten (10) or more residents of the county where the confined feeding operation is to be located may object to the approval by filing an objection petition with the county executive not more than ten (10) days after the last date of publication of the approval under section 1.3(b)(3) of this chapter. An objection petition filed under this subsection must specifically set forth the reasons for the residents' objections.

(b) Subject to subsection (c), if an objection petition is filed with a county executive under subsection (a) the county executive shall do the following:

C
o
p
y



(1) Publish notice under IC 5-3-1 of a public hearing on the application approval to which the objection petition relates. The public hearing must be held not later than forty-five (45) days after the date of the objection petition under subsection (a).

(2) Hold the public hearing, taking testimony from the applicant and the public on the application approval.

(3) Conduct any inquiry or investigation, consistent with the county executive's duties under this chapter, that the county executive considers necessary before making a determination.

(c) A county executive may uphold the application approval to which an objection petition relates only if the county executive determines that the construction and operation of the proposed confined feeding operation are consistent with the public health, safety, and welfare.

(d) After the public hearing and any inquiry or investigation under subsection (b), a county executive with which an objection petition is filed under this section shall:

(1) make a written determination on the objection petition; and

(2) give notice of the determination to:

(A) the applicant;

(B) the first ten (10) residents whose names appear on the objection petition; and

(C) the department;

not later than thirty (30) days after the date of the public hearing, unless the county executive and the first ten (10) residents whose names appear on the objection petition agree to a longer time.

(e) If both of the entities referred to in section 1.2(a)(1) and 1.2(a)(2) of this chapter approve the applications submitted by an applicant under section 1.2 of this chapter, and if ten (10) or more residents of the county where the confined feeding operation is to be located file an objection petition with the county executive under this section, the county executive may consolidate the public hearings under subsection (b) on the entities' approval of the applications.

SECTION 6. IC 13-18-10-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) Application to the department for approval of the construction of a confined feeding operation must be made on a form provided by the department. An applicant must submit the completed application form to the

C
o
p
y



department together with the following:

(1) Plans and specifications for the design and operation of manure treatment and control facilities.

(2) A manure management plan that outlines procedures for the following:

(A) Soil testing.

(B) Manure testing.

(3) Maps of manure application areas.

(4) Supplemental information that the department requires, including the following:

(A) General features of topography.

(B) Soil types.

(C) Drainage course.

(D) Identification of nearest streams, ditches, and lakes.

(E) Location of field tiles.

(F) Location of land application areas.

(G) Location of manure treatment facilities.

(H) Farmstead plan, including the location of water wells on the site.

(5) A fee of one hundred dollars (\$100). The department shall refund the fee if the department does not make a determination in accordance with the time period established under section 2.1 of this chapter.

(b) An applicant ~~who~~ that applies to the department or to the entities referred to in section 1.2(a)(1) and 1.2(a)(2) of this chapter for approval to construct a confined feeding operation on land that is undeveloped or for which a valid existing approval has not been issued shall make a reasonable effort to provide notice:

(1) to:

(A) each person who owns land that adjoins the land on which the confined feeding operation is to be located; or

(B) if a person who owns land that adjoins the land on which the confined feeding operation is to be located does not occupy the land, all occupants of the land; and

(2) to the county executive of the county in which the confined feeding operation is to be located;

not more than ten (10) working days after submitting an application. The notice must be sent by mail, be in writing, include the date on which the application was submitted to the department or an entity referred to in section 1.2(a)(1) or 1.2(a)(2) of this chapter, and include a brief description of the subject of the application. The applicant shall pay the cost of complying with this subsection. The

C
o
p
y



applicant shall submit an affidavit to the department **or the entities referred to in section 1.2(a)(1) and 1.2(a)(2) of this chapter** that certifies that the applicant has complied with this subsection. **The applicant may combine in a single mailing the information required by this subsection relating to applications to both of the entities referred to in section 1.2(a)(1) and 1.2(a)(2) of this chapter.**

(c) Plans and specifications for manure treatment or control facilities for a confined feeding operation must secure the approval of the department. The department shall approve the construction and operation of the manure management system of the confined feeding operation if the commissioner determines that the applicant meets the requirements of:

- (1) this chapter;
- (2) rules adopted under this chapter;
- (3) the water pollution control laws;
- (4) rules adopted under the water pollution control laws; and
- (5) policies and statements adopted under IC 13-14-1-11.5 relative to confined feeding operations.

SECTION 7. IC 13-18-10-2.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2.1. (a) **Subject to subsection (f)**, the department:

- (1) shall make a determination on an application not later than ninety (90) days after the date the department receives the completed application, including all required supplemental information, unless the department and the applicant agree to a longer time; and
- (2) may conduct any inquiry or investigation, consistent with the department's duties under this chapter, the department considers necessary before making a determination.

(b) If the department fails to make a determination on an application not later than ninety (90) days after the date the department receives the completed application, the applicant may request and receive a refund of an approval application fee paid by the applicant, and the commissioner shall:

- (1) continue to review the application;
- (2) approve or deny the application as soon as practicable; and
- (3) refund the applicant's application fee not later than twenty-five (25) working days after the receipt of the applicant's request.

(c) The commissioner may suspend the processing of an application and the ninety (90) day period described under this section if the department:

- (1) determines within thirty (30) days after the department

C
o
p
y



receives the application that the application is incomplete; and
 (2) has mailed a notice of deficiency to the applicant that specifies
 the parts of the application that:

- (1) (A) do not contain adequate information for the department
 to process the application; or
- (2) (B) are not consistent with applicable law.

(d) The department may establish requirements in an approval
 regarding that part of the confined feeding operation that concerns
 manure handling and application to assure compliance with:

- (1) this chapter;
- (2) rules adopted under this chapter;
- (3) the water pollution control laws;
- (4) rules adopted under the water pollution control laws; and
- (5) policies and statements adopted under IC 13-14-1-11.5
 relative to confined feeding operations.

(e) The department may amend an approval or revoke an approval:

- (1) for failure to comply with:
 - (A) this chapter;
 - (B) rules adopted under this chapter;
 - (C) the water pollution control laws; or
 - (D) rules adopted under the water pollution control laws; and
- (2) as needed to prevent discharges of manure into the
 environment that pollute or threaten to pollute the waters of the
 state.

**(f) With respect to the construction of a confined feeding
 operation for which construction is to begin after December 31,
 2008, the department may approve the application only if an
 application for approval of the construction has been approved
 under sections 1.2 through 1.5 of this chapter.**

SECTION 8. IC 13-18-10-2.2 IS AMENDED TO READ AS
 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2.2. (a) If an applicant
 receives an approval under **section 2.1** of this chapter and completes
 construction, not more than thirty (30) days after the date the applicant
 completes the construction the applicant shall execute and send to the
 department an affidavit that affirms under penalties of perjury that the
 confined feeding operation:

- (1) was constructed; and
- (2) will be operated;

in accordance with the requirements of the department's approval.

(b) Construction of an approved confined feeding operation must:

- (1) begin not later than two (2) years; and
- (2) be completed not later than four (4) years;

C
o
p
y



1 after the date the department approves the construction of the confined
 2 feeding operation or the date all appeals brought under IC 4-21.5
 3 concerning the construction of the confined feeding operation have
 4 been completed, whichever is later.

5 SECTION 9. IC 13-18-10-4 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) The board may
 7 adopt rules under IC 4-22-2 and IC 13-14-9 and the department may
 8 adopt policies or statements under IC 13-14-1-11.5 that are necessary
 9 for the proper administration of this chapter. The rules, policies, or
 10 statements may concern construction and operation of confined feeding
 11 operations and may include **the following**:

12 (1) Uniform standards for:

13 ~~(1)~~ (A) construction and manure containment that are
 14 appropriate for a specific site; and

15 ~~(2)~~ (B) manure application and handling ~~that are~~ consistent
 16 with best management practices **that are**:

17 ~~(A)~~ (i) designed to reduce the potential for manure to be
 18 conveyed off a site by runoff or soil erosion; and

19 ~~(B)~~ (ii) ~~that are~~ appropriate for a specific site.

20 (2) **Guidance and standards for the determinations required**
 21 **under sections 1.3 through 1.5 of this chapter.**

22 (b) Standards adopted in a rule, policy, or statement under
 23 subsection (a) must:

24 (1) consider confined feeding standards that are consistent with
 25 standards found in publications from:

26 (A) the United States Department of Agriculture;

27 (B) the Natural Resources Conservation Service of the United
 28 States Department of Agriculture;

29 (C) the Midwest Plan Service; and

30 (D) university extension bulletins; and

31 (2) be developed through technical review by the department,
 32 university specialists, and other animal industry specialists.

C
o
p
y

